THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte THOMAS G. FELDPAUSCH
and CARL V. FORSLUND

_____

Appeal No. 97-4240
Application 08/294,074[1]

_____

ON BRIEF

_____

Before CALVERT, MEISTER and FRANKFORT, ***Administrative Patent Judges***.

MEISTER, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 4-12, 22-26, 28 and 30. Claims 13-20, 27 and 31, the only other claims remaining in the application, have been indicated as being allowable subject to the requirement that they be rewritten to

[1] Application for patent filed August 22, 1994. According to appellants, this application is a continuation-in-part of Application 08/063,463, filed May 18, 1993.

include all the subject matter of the claims from which they depend. We reverse.

The appellants' invention pertains to (1) an integrated utility distribution and panel system for open office plans and (2) a panel system for open office plans. Independent claims 1 and 28 are further illustrative of the appealed subject matter and read as follows:

1. An integrated utility distribution and panel system for open office plans and the like, comprising:

a prefabricated floor construction adapted to be abuttingly supported on a building floor, and including a hollow interior portion thereof defining at least one raceway to route utilities therethrough, and a floor surface shaped to support at least one workstation thereon;

at least two utility posts for distributing utilities from said floor construction to the workstation, and each including a foot shaped to be mounted on said floor construction to rigidly support said utility posts in a generally upstanding orientation; said utility posts each include a fixed panel support channel extending longitudinally along a substantial portion of the same, and a utility channel which communicates with the raceway in said floor construction for dispensing utilities to the workstation; and

at least one non-structural panel extending between and supported by said utility posts; said panel having a lightweight non-structural construction, with connectors positioned adjacent opposite ends thereof which are slidably received directly in and mate with the panel support channels in said utility posts to

removably support said panel on said utility posts, and permit said panel to be shifted vertically therealong between various elevations; said panel connectors being laterally movable to permit said panel to be manually mounted in and removed from the fixed panel support channels of said utility posts without tools.

28. A panel system for open office plans and the like, comprising:

at least two posts, each including a foot shaped to be mounted on an associated building floor surface to rigidly support said posts in a generally upstanding orientation; said utility posts each include at least one fixed panel support channel which extends longitudinally along a substantial portion of the same; and

at least one non-structural panel extending between and supported by said posts; said panel having a lightweight non-structural construction, with connectors positioned adjacent opposite ends thereof which mate with the panel support channels in said utility posts to removably support said panel on said utility posts; said panel connectors being slidably received in the panel support channels of said posts, such that said panel can be shifted vertically between various elevations, and being laterally movable to permit said panel to be manually mounted in the removed from the fixed panel support channels of said posts without tools.

The references relied on by the examiner are:

Polhamus	3,377,756	Apr. 16, 1968
Stephens	4,296,574	Oct. 27, 1981
Weissenbach et al. (Weissenbach)	4,863,223	Sep. 5, 1989
Kurrasch	5,009,043	Apr. 23, 1991
Quinlan, Jr., et al. (Quinlan)	5,150,554	Sep. 29, 1992

The claims on appeal stand rejected in the following manner:

(1) Claim 28 under 35 U.S.C. § 102(b) as being anticipated by either Polhamus or Quinlan;

(2) Claim 30 under 35 U.S.C. § 103 as being unpatentable over either Polhamus or Quinlan in view of Kurrasch;

(3) Claims 1 and 28 under 35 U.S.C. § 103 as being unpatentable over either Polhamus or Quinlan in view of either Stephens or Weissenbach; and

(4) Claims 4-12, 22-26 and 30 under 35 U.S.C. § 103 as being unpatentable over either Polhamus or Quinlan in view of Kurrasch and either Stephens or Weissenbach.

Each of the above noted rejections is bottomed on the examiner's view that both Polhamus and Quinlan teach a non-structural panel having connectors that (1) are slidably received in support channels in the posts and (2) allow said panel to be "laterally movable to permit said panel to be manually mounted in and removed from the fixed panel support channels"[2] of ***at least two posts*** without the use of tools as expressly required by

[2] By reciting that the connectors are "laterally movable," it is readily apparent from a perusal of page 25 of the specification that the appellants are referring to the movement of the connectors 204 along the horizontal extent of a panel due to strips 228 being compressed and expanded as the panel is installed in the channels of two spaced-apart, vertically-oriented posts.

independent claims 1 and 28. Even if we were to agree with the examiner's first contention, we cannot agree with the second contention.

With specific regard to Polhamus the examiner states that:

> Polhamus shows panel 18 within [a] channel of utility post 12. Compressible connectors such as at 27, 39 or 34, are utilized to hold the panel in place. [Answer, page 4.]

There is, however, absolutely nothing in Polhamus to suggest that the members 27, 39 and 34 are "compressible" connectors which would allow the panel 18 to be "laterally movable" to such an extent so as to permit the panel to be manually mounted in and removed from the support channels of two posts.

In the embodiment of Fig. 1 of Polhamus the panel 18 is held between a flange 36 on each of the posts 12 and a retainer member 27 which is slidable horizontally into and out of engagement with a slot 56 in each post, with retainer members in turn being fastened to each post by a cover 19. There is absolutely nothing in Polhamus which suggests that the retainer members 27 are "compressible" as the examiner contends, much less being

laterally movable so as to permit the panel to be mounted in and removed from **the channels** in the manner claimed. In fact, the retaining members 27 in conjunction with the flanges 36 on the posts actually **form the channels**.

In the embodiment of Fig. 3 of Polhamus, a panel (glass sheet 41) is held in a groove in a bracket 39 that extends between a flange 36 on each post 20 and a retainer member 34 (which is similar to the retainer member 27 of the Fig. 1 embodiment and is not disclosed as being compressible) that is in turn fastened to each post by a cover 46. Thus, as is the case in the embodiment of Fig. 1, the retainer members 34 in conjunction with flanges 36 on the posts actually form the channels. Although the bracket 39 is described as being of the "snap-in" type (see column 2, line 61) and thus might possibly be construed as being "compressible," there is absolutely nothing in Polhamus which either teaches or fairly suggests that this bracket is "laterally movable" to the extent necessary to permit the panel or glass sheet 41 to be manually mounted in and removed from the channels in the posts in the manner claimed.

With specific regard to Quinlan the answer states that:

> Quinlan, Jr. et al. shows panel 12 within [a] channel of utility post 21. Compressible connectors such as at 14/16 are utilized to hold the panel in place. [Page 5.]

Figs. 4 and 5 of Quinlan show panels 12 first being inserted into channels and thereafter secured to posts 21 by connecting or securing elements 16. To this end, Quinlan provides an edge rail 14 having slots 15 on each end of the panels and further provides grooves 39 in the bottom of the channels in the posts. The connecting elements 16 are described as including

> a pair of vertically elongate hinge plate[s] **17** joined along one edge by a hinge **18** (namely a plastic or "living" hinge), and each hinge plate **17** has a generally L or T-shaped part **19** projecting outwardly from one side thereof. [Column 3, lines 1-5.]

In order to secure an end of one of the panels in a channel in a post, one part 19 of the connecting element 16 is inserted to a slot 15 on the edge rail 14 while the other part 19 of the connecting element is inserted into a groove 39 in the bottom of the channel. Even if the examiner is correct in asserting that the living hinge-type connecting element 16 of Quinlan is "compressible" (at least to some degree), there is absolutely nothing in Quinlan which either teaches or fairly suggests that this connecting element is "laterally movable" to the extent

necessary to permit the panels 12 to be manually mounted in and removed from the channels in the posts in the manner claimed.

We have carefully reviewed the references to Kurrasch, Stephens and Weissenbach but find nothing therein which would overcome the deficiencies we have noted above with respect to Polhamus and Quinlan. This being the case, we will not sustain any of the above-noted rejections.

As a final matter, we note that on September 3, 1996 the appellants filed an amendment after final rejection with a declaration attached thereto (see Paper No. 7) and the examiner denied entry of the amendment and declaration. The appellants petitioned the examiner's refusal to enter the amendment and declaration. The decision on petition (Paper No. 13), while denying the appellants' request to have the amendment entered, nevertheless granted the appellants' petition to the extent of having the examiner consider the declaration. However, it is not apparent from the record that the examiner ever considered the declaration. On the other hand, the appellants have not mentioned the declaration in either the brief or reply brief and therefore we presume that they did not intend to rely on this evidence. In any event, even if the appellants had relied on the

declaration in the brief, this evidence would not need to be considered inasmuch as the prior art relied on by the examiner fails to establish a ***prima facie*** case of obviousness. ***See In re Fine***, 837 F.2d 1071, 1076, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988).

The decision of the examiner is reversed.

REVERSED

IAN A. CALVERT Administrative Patent Judge	)	
JAMES M. MEISTER Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
CHARLES E. FRANKFORT Administrative Patent Judge	)	

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